IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.18 OF 2005

The State of Maharashtra. ..Appellant.

Vs.

Vijay Prakash Patole & ors. .. Respondents.

Mrs.U.V.Kejariwal, Addl. Public Prosecutor for the appellant.

CORAM : R.M. LODHA &
R.S. MOHITE, JJ.

DATED : 9th February, 2005

P.C.

Rule-19 of Chapter XXVI of Bombay High Court

Appellate Side Rules, 1960 reads thus:

> **"19. Procedure re-appeals against acquittals by Private parties.**
>
> (i) Every application for leave under section 378(3) should be a composite application giving necessary facts and circumstances of the case alongwith the grounds which may be urged in the appeal with a prayer to entertain the appeal. The appellant shall file alongwith application two typed copies of the composite application and the Judgment or Judgments of the Court concerned.
>
> (ii) If the leave to appeal is granted, the composite application presented shall be entered in the register of appeals and numbered accordingly. The appellant shall forthwith supply the requisite court fee stamps prescribed for the appeal. The Sessions Court shall be required to prepare five paper books."

2. The State has preferred this appeal against the Judgment and order of acquittal. We are afraid presentation of this criminal appeal is not in

accordance with the aforesaid Rule 19 of Chapter XXVI.

3. We may observe that Section 378 of the Code of Criminal Procedure of 1973 provides for appeal in the case of acquittal. Sub Section-(3) of Section 378 mandates that no appeal under Section 1 or 2 shall be entertained except the leave of the court. The State is aggrieved by the Judgment and order of acquittal. As per procedure prescribed by the High Court Appellate Side Rules the Criminal application for leave to appeal has to be made where State is aggrieved by the Judgment of acquittal and not prefer the criminal appeal directly. As per sub rule (ii) of Rule 19 when the leave to appeal is granted, the application presented under sub rule (i) of Rule 19 is required to be entered in the register of appeals and numbered accordingly.

4. Office is, accordingly, directed to reprocess the matter in the light of the procedure prescribed under Rule 19 and after necessary amendment is made, place the Criminal application for leave to appeal for admission before the court.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)